

the Act. Moreover, the waiver process itself is time-consuming and simply defers the time when legitimate conversions may occur.

Equally important, the current use restrictions incorporate an anticompetitive ban on the “co-mingling” of UNE and access traffic on the same facility. *See Notice* at 3. This ban is also completely unworkable. As the *Notice* suggests (at 3), such a policy effectively requires competitive LECs to establish two parallel networks, one for local traffic and one for access traffic. Indeed, the Commission’s policy is so onerous that it effectively prevents competitive LECs from converting access circuits to UNEs even when the competitive LEC is in fact providing local service to the customer. This is truly a *reductio ad absurdum* whose sole rationale is an attempt to maintain two incompatible regulatory regimes over services provided in exactly the same way over exactly the same facilities.

The ban on co-mingling is unworkable because of the way competitive LECs typically provide service. Competitive LECs today often provide local service using a combination of DS-1 channel terminations, multiplexing, and DS-3 transport, all purchased from interstate access tariffs. DS-1 loop facilities are typically associated with a single customer. As a result, in any given area, a competitive LEC may have some DS-1 loops that carry predominantly local traffic, and some that carry only special access traffic. The higher capacity transport and multiplexing facilities, however, almost always carry traffic from many competitive LEC customers, some of whom are local customers and some of whom are access-only customers. In other words, the competitive LECs’ multiplexing and transport facilities almost always carry both traffic that is subject to the use restriction and traffic that is eligible for conversion to UNEs.

As a result, banning co-mingling of UNE and access traffic on the same facility usually makes it economically infeasible to convert access circuits to UNEs. The ban on co-

mingling requires the competitive LEC to establish *separate, parallel* multiplexing and transport arrangements to carry the UNE traffic. Thus, in order to obtain UNE rates for network elements that are concededly used to provide a significant amount of local traffic, the competitive LEC must literally create two, parallel networks in the same central office, even when there is ample capacity on the original multiplexing and transport facilities that could accommodate the UNE traffic.

In addition, the ban on co-mingling creates a practical barrier to conversion. To convert a circuit to UNEs, the incumbent LECs generally insist that the loop eligible for conversion (carrying significant local traffic) must be *disconnected* from the multiplexing and transport facilities (which typically carry both local and access-only traffic). That in turn requires the competitive LEC to get a release from all the customers using the facility. Because of the risks of service interruption, customers are naturally hesitant to grant such a release.

There is no technical or legal basis for such an anticompetitive restriction. The facilities at issue are fully capable of carrying both UNE and access traffic simultaneously. Indeed, virtually all UNEs involve the “co-mingling” of UNE traffic in the LEC network with other non-UNE traffic in precisely this manner – *e.g.*, shared transport, switching, and signaling. Moreover, the substantial expense of establishing parallel and inefficiently used networks, coupled with the service-related risks associated with the disconnection of the customer’s service, would rarely be justified.<sup>15</sup> The ban on “co-mingling” is also blatantly discriminatory – incumbent LECs are not required to build and maintain separate networks to provide services that could easily be carried over a single set of facilities. Requiring parallel networks would also

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<sup>15</sup> In addition, the need to build redundant, parallel networks would force CLECs to focus their investments unduly on loop and transport facilities, and away from other investments that would allow them to differentiate their services, such as switching, customer service capabilities, and adjunct database access.

necessarily require service disruptions to switch customers from the “access” network to the “UNE” network. Thus, even if competitive LECs could surmount the hurdle of “certification,” the ban on co-mingling would, as a practical matter, preclude the conversion of any access circuits to UNEs – even the circuits that are eligible for conversion.<sup>16</sup>

For all of these reasons, the interim use restrictions are counterproductive and thwart the Commission’s own goals. Throughout this proceeding, the Commission has consistently maintained that UNE loop-transport combinations should at least be available to competitive LECs when they are providing local service. The Commission’s use restrictions are inherently unworkable, however, and as a result competitive LECs have converted almost no special access circuits to UNEs since the issuance of the *Supplemental Order Clarification*. See Carroll-Rhodes Dec. ¶¶ 9, 22. Moreover, as experience with these interim restrictions has confirmed, any attempt to keep the use restrictions on a permanent basis will require a complex set of Rube Goldberg procedures and rules that bear no relation to technological or engineering realities and will inevitably drain the resources of both carriers and the Commission.<sup>17</sup> For all of these reasons, the Commission should eliminate the interim use restrictions immediately.

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<sup>16</sup> Moreover, the Commission’s further ban on even connecting a “UNE” facility to an “access” facility prevents a competitive LEC from converting DS-1 loops carrying only local traffic to UNEs while leaving them connected to multiplexing and transport facilities carrying a mix of traffic. See *Supplemental Order Clarification* ¶ 28 (citing Letter of Chuck Goldfarb, WorldCom, to Larry Strickling, FCC, dated April 4, 2000, at 6-7).

<sup>17</sup> For example, if the Commission were to retain the use restrictions, it should certainly permit co-mingling of UNE and access traffic. But permitting co-mingling would not allow the Commission to avoid the imposition of other regulatory burdens that, while perhaps administrable, could be avoided by simply eliminating use restrictions altogether. For example, co-mingling will often require UNEs to be “connected” to tariffed access services (e.g., UNE loops and transport “connected” to tariffed access services on multiplexing and transport facilities carrying co-mingled traffic). See *Supplemental Order Clarification* ¶ 22(2) & (3) (prohibiting “loop-transport combinations to be connected to the incumbent LEC’s tariffed services”). The Commission would have to establish and enforce rules to govern the numerous operational issues involved in the connection of UNEs to tariffed services, including who performs the connection, under what terms and conditions, how it is to be ordered, what service

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## CONCLUSION

For the foregoing reasons, the Commission should eliminate the interim use restrictions on unbundled network elements that it adopted in the *Supplemental Order Clarification* and prohibit incumbent LECs from limiting requesting carriers' ability to "co-mingle" unbundled network elements and services.

Respectfully submitted,



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April 5, 2001

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commitments apply on an end-to-end basis, and the like. Second, co-mingling would also require "ratcheting" – *i.e.*, charging UNE and access prices on a pro rata basis. Although such ratcheting occurs today in access markets in very limited circumstances, co-mingling would require the use of ratcheting on a much more widespread basis. The Commission and the parties would have to establish procedures for determining the mix of traffic, accounting for changes in that mix of traffic, who is to administer the process of determining the mix of traffic (incumbent LEC or competitive LEC), and other related issues. While such regulations and procedures could theoretically be designed and implemented, elimination of the use restrictions altogether is the far superior solution.

**CERTIFICATE OF SERVICE**

I hereby certify that on this fifth day of April, 2001, I caused true and correct copies of the forgoing Comments of AT&T Corp. to be served on all parties by mailing, postage prepaid or hand delivery to their addresses listed on the attached service list.

Dated: April 5, 2001  
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**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Implementation of the	)	CC Docket No. 96-98
Local Competition Provisions	)	
in the Local Telecommunications Act of 1996	)	

**Declaration of Alice Marie Carroll and Cynthia S. Rhodes  
On Behalf Of AT&T Corp.**

1. My name is Alice Marie Carroll. I have a B.S. in Business Administration from the University of Tennessee at Knoxville. I first joined AT&T in 1983 and have held a series of jobs with increasing management responsibility since that time. Since March of 2000, I have been a District Manager for Local Services and Access Management within our Local Network Services organization. In that capacity, I am responsible for Business Planning and various cost optimization projects. Prior to my current position, I was a Product Manager in Consumer Long Distance and an Operations Area Manager for Network Systems installations.
  
2. My name is Cynthia S. Rhodes. I have an A.B. in Economics and Business from Lafayette College and an MBA from Colorado State University. I first joined AT&T since 1969 and have held a series of jobs with increasing management responsibility since that time. Currently, I am Manager of Local Connectivity Cost Optimization. In that capacity, I have provided expert support to AT&T in a number of regulatory proceedings related to DS1 and DS3 costs and rates. Prior to my current position, I



was Manager, Global Competitive Assessment, and Staff Manager, Local Exchange Competition Technical Policy.

3. We are both members of the national Local Service and Access Management organization. As part of our jobs, we are responsible for identifying and implementing opportunities to reduce AT&T's current payments to other carriers (both incumbent local exchange carriers ("ILECs") and other competitive local exchange carriers ("CLECs")) for facilities AT&T uses to serve its customers.
4. AT&T offers several types of local service to large and medium-sized business customers, including the AT&T Digital Link and AT&T Prime families of services. In order to provide these services, AT&T must, in most cases, use DS1 and/or DS3 facilities provided by incumbent LECs to provide the portion of the service between the customer's premises and the customer's local serving office ("LSO"). AT&T often purchases these facilities as special access services. As a result, AT&T must pay considerably more than the economic cost for these facilities. Shortly before the FCC issued its *UNE Remand Order*,<sup>1</sup> AT&T's national Local Service and Access Management ("LSAM") organization established a project to identify a plan to convert our current Special Access DS1 services purchased from ILECs to unbundled network elements ("UNEs") that provide the same functionality. At that time, we were designated team leaders to implement the plan. The conversion of

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<sup>1</sup> Third Report and Order, *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, 15 FCC Rcd. 3696 (1999) (*UNE Remand Order*).

existing special access circuits to UNEs was seen as consistent with the requirements of the Telecommunications Act of 1996 (and the FCC's own analysis of the law in its *Local Competition Order*), and a reasonable approach to lowering AT&T's costs of leased facilities. When our organization began planning the conversion project, AT&T's initial plan was to focus its efforts on converting to UNEs the ILEC special access circuits it was using in whole or in part to provide its customers with local service.

5. AT&T's use of special access trunks to provide local service has been driven, in large part, by the history of the development of competitive local service. Prior to the 1996 Act, competitive access providers ("CAPs") typically used a combination of their own facilities and leased ILEC facilities to provide alternative access. One such CAP was Teleport Communications Group ("TCG"), which AT&T acquired in 1998 and whose facilities are the core of the infrastructure AT&T uses to provide local services to business customers. Before the 1996 Act was passed, the only way a CAP could obtain facilities from an ILEC was through the ILECs' access tariffs.
6. As CAPs such as TCG were transformed and grew into CLECs and the scope of their service offerings expanded, their need for connectivity between customer premises and their own switches also grew, far beyond their ability to provision their own facilities. Moreover, despite the passage of the 1996 Act, the practice of using special access circuits to provision local as well as long distance service continued for many reasons. First, many ILECs did not establish cost-based prices for these types of facilities so they could be purchased as UNEs. Indeed, some ILECs still

have not established UNE prices for such facilities. In such cases, CLECs had (and sometimes still have) no choice but to acquire the necessary functionality as special access. Moreover, the process of ordering and provisioning UNEs was (and often still is) far more cumbersome and costly than the process for special access, for many reasons: the state of OSS interfaces and other operational issues, difficulty in obtaining collocation space, disputes over the ability to obtain high capacity facilities as unbundled elements, and lack of ILEC cooperation.

7. Based on the guidance provided by the Commission's *UNE Remand Order* and its follow-on *Supplemental Order*,<sup>2</sup> AT&T attempted to convert to UNEs only those special access circuits that it used to provide local service. But this process met with strong opposition from all ILECs, both in terms of reaching agreement on the facilities that could be converted, and the process by which such conversions could take place.<sup>3</sup> But one thing that has become clear in the marketplace is that customers will generally not wait for service. The retail customer is generally seeking to fulfill critical business needs it has and, therefore, will have little patience or inclination to select a carrier with a lengthy service delivery interval (as might be required if a CLEC tries to provide its service using UNEs rather than special access) – even if the longer interval offers substantial cost reductions for the carrier.

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<sup>2</sup> Supplemental Order, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 9698, FCC 99-379 (Nov. 24, 1999).

8. On June 2, 2000, the FCC released its *Supplemental Order Clarification*.<sup>4</sup> In that order, the Commission established three so-called “safe harbors” pursuant to which a requesting carrier could convert existing special access circuits to UNEs.
9. Upon the release of the *Supplemental Order Clarification*, AT&T began an analysis of the three safe harbor options outlined by the Commission and attempted to assess its ability to implement them. Clearly, AT&T is highly motivated to convert these facilities to UNEs in order to realize substantial cost savings. However, despite this incentive, these options have proven almost impossible to satisfy. As a result, AT&T has been unable to convert to UNEs even the special access facilities that it uses to provide its customers with significant amounts of local exchange service.
10. Despite substantial effort on the part of AT&T to meet the conditions required by the three safe harbor options, they have proved unworkable for many reasons, including customer disruptions, system limitations, the significant costs of system modifications that would be necessary to meet the certification process, and network inefficiencies implicit in the prohibition on “co-mingling” of UNE loops or loop-transport combinations with tariffed special access services.

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(... continued)

<sup>3</sup> AT&T was particularly concerned with ILEC proposals that called for a disconnection and re-connection of the facilities presently serving customers. Additionally, AT&T faced significant opposition to its proposals to convert such facilities on a “project” basis.

<sup>4</sup> Supplemental Order Clarification, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, FCC 00-183 (June 7, 2000).

11. More specifically, the overall design of the safe harbors is based on a series of assumptions that are contrary to basic principles of network design and operation. First, and most fundamentally, all of the safe harbors are based on a CLEC's case-by-case certification of the amount of local traffic that is being carried over the facilities at issue. Such a process assumes – incorrectly – that CLECs like AT&T have the means to collect detailed information on individual customers' local usage to provide the necessary certification. That is not the case. It is a basic notion of network design that network measurement functionalities are placed at the *switch* end of the loop, rather than at the customer end of the loop or some intermediate point. To our knowledge, this network design is true not only in AT&T's network, but in the networks of the ILECs and other CLECs. The Commission's certification process, however, would require measurement capabilities at the *customer* end of the loop, which do not exist today and would be costly and inefficient to implement. Presently available data collection systems simply do not capture the information necessary to demonstrate compliance with the safe harbor options.
12. Second, to the extent that local usage information is maintained at all, such data are generally not in the control of the service provider. The certification required by the *Supplemental Order Clarification* mistakenly assumes that carriers have access to information regarding the customer's total use of telecommunications services, including the number of carriers providing that service, and the level of local traffic the customer generates at a particular location. In fact, this information is generally only available to the customer itself (typically to the customer's telecommunications

manager), and is not disclosed to other carriers, much less disclosed on the routine and ongoing basis that would be required under the safe harbor provisions.

13. Third, the certification process underlying the safe harbors ignores the fact that the sophisticated measuring systems that would be needed to begin to comply with the safe harbor conditions are not in existence today, and are not readily available. In addition, AT&T's analysis has revealed that the systems simply cannot be created in a cost-effective manner. This is because it is often not clear whether traffic going to or from a customer's premise is "local." For example, a customer's PBXs can be tied together using DS1 facilities and provide connectivity among various sites using abbreviated dialing. A carrier providing services to such a customer might not record the data, and even if it did, would likely not have the capability to determine whether the traffic was local based on the dialed digits.<sup>5</sup> It is nearly impossible to identify what terminating usage is local and what is non-local without a burdensome transfer of records between the carrier and its customer, which itself would require extraordinary data processing time and resources, or in the alternative, an inefficient and cost-prohibitive separation of trunk groups.

14. Fourth, the safe harbor options also appear to rely on the assumption that connections within a carrier's network are static. This is simply not true in an

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<sup>5</sup> It might be possible for a carrier to make this determination if it had access to the routing plan and detailed call records of the customer's network. However, just as with other information within the customer's control, customers typically do not disclose such information.

efficiently designed network, in which the technological configuration for service is designed to vary the routing of traffic to take advantage of available capacity in the network. Thus, the characteristics of the traffic on any individual facility will vary greatly over time.<sup>6</sup>

15. These conceptual flaws in the overall design of the safe harbors became painfully apparent when AT&T began to evaluate the use of the safe harbors. The first “safe harbor” allows a carrier to convert facilities if it certifies that it is the *exclusive* provider of end user’s local exchange service and the facility providing the service terminates in a collocation arrangement. Despite providing significant local services to numerous businesses, AT&T cannot convert existing circuits under this option for several independent reasons. First, most large to mid-sized business customers choose AT&T local service, or service from another CLEC, in order to take advantage of network diversity. These customers perceive an advantage in having service from *multiple* providers in order to ensure connectivity to the outside world even if there are temporary constraints or problems on any one provider’s network. Thus, they typically do not use AT&T (or any CLEC) as their sole local service

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<sup>6</sup> An example of such efficiencies is a CLEC’s use of EELs themselves. In most cases, the EEL used to serve a particular customer does not terminate directly onto the CLEC’s local switch. Instead, in order to more efficiently use switch resources, intervening electronics are inserted to connect the time slot on the EEL facility to the switch only when that time slot is active. While this is clearly the most efficient and appropriate network design to handle traffic from multiple customers, use of this configuration dramatically complicates a CLEC’s ability to monitor traffic to collect the data needed to take advantage of the second and third safe harbors described in the *Supplemental Order Clarification*.

provider.<sup>7</sup> Moreover, they generally are reluctant (or would simply refuse) to disclose to one CLEC any information other than the fact that they have more than one local service provider.

16. Next, any requirement that a customer use *only* AT&T service is simply contrary to the notion of competition. In order to qualify for this option, AT&T would have to require customers to purchase only AT&T local service in order to be eligible to receive AT&T's competitive service. AT&T would have to require customers to enter into exclusive contracts that could only be enforced by audits and litigation. And even then, the FCC prohibits such exclusive contracts for the approximately one million commercial multiple tenant locations around the country.<sup>8</sup> These methods simply would not be compatible with the notion of good customer relationships. In sharp contrast, ILECs can use the same UNEs to offer the same customer the same service without requiring exclusivity and still be assured that their costs will not change just because the customer has more than a single local service provider.

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<sup>7</sup> In fact, not all types of local services provided by AT&T are even intended to be used as the customer's sole source of service. For example, limitations on the Class 4 switches used to provide AT&T Digital Link typically require that the service not be marketed as the customer's only service, but rather as an alternative to some of the services previously provided by the incumbent.

<sup>8</sup> First Report and Order and Further Notice of Proposed Rulemaking in WT Docket No. 99-217, Fifth Report and Order and Memorandum Opinion and Order in CC Docket No. 96-98, and Fourth Report and Order and Memorandum Opinion and Order in CC Docket No. 88-57, *Promotion of Competitive Networks in Local Telecommunications Market, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Review of Sections 68.104, and 68.213 of the Commission's Rules Concerning* (continued . . .)



17. Further, AT&T salespeople confirm that customers demand the flexibility to change both the amount of service purchased from any one provider and the number of providers they use, so they can obtain the most advantageous mix of service, quality and price. These same customers also want to be able to make their purchase decisions without having to disclose whether they use other service providers. As a result, AT&T is generally precluded from certifying, or even knowing, that it is (and will continue to be) a customer's only local service provider. Thus, the first safe harbor is, as a practical matter, simply unavailable to AT&T and other CLECs.
18. The FCC's second and third safe harbor options require a carrier to certify that it provides local exchange and exchange access to the end user's premises at a particular level and in a particular configuration. The second option, for example, requires the carrier to handle at least one-third of the end user's local traffic measured as a percentage of total end user customer local dial tone lines. Under this option, the carrier must certify for DS1 circuits and above that 50% of the activated channels on the loop portion of the facility have at least 5% local voice traffic, and the entire loop has 10% local traffic. In addition, the facility must terminate in a collocation arrangement, and the carrier may not connect the loop-transport combination to the ILEC's tariffed services. Similarly, the third safe harbor requires a carrier to certify that at least 50% of the activated channels on a circuit are used to

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*Connection of Simple Inside Wiring to the Telephone Network*, 2000 FCC LEXIS 5672 (rel. Oct. 25, 2000).

provide originating and terminating local traffic, and that 50% of the traffic on each local dial tone circuit must be used to provide local voice, and that 33% of the entire loop facility must be used to provide local voice traffic.

19. Both the second and third options therefore rely on the notion that usage is measured at the customer's premises as well as measured at the interface of each multiplexing function. However, as noted above, this assumption is completely contrary to existing measurement techniques and capabilities.
20. The second and third options require a carrier to certify usage both on the loop overall and the loop's time slots individually. However, the safe harbors' requirement of certification of such complex mixes of local traffic levels bears no relationship to what can be measured in an efficient network configuration. For example, in the "EEL" configuration, the individual loops (that may be from a variety of locations in a local serving office) are multiplexed onto a higher capacity facility. Although the loops might each have distinct uses, at any one time, any of those loops could be carrying all local traffic, no local traffic, or no traffic at all. Thus, any attempt to monitor that traffic would require the ability to monitor traffic at the end user's premise and at the point of multiplexing – neither of which are points where AT&T deploys equipment to record usage.<sup>9</sup> The only alternative would

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<sup>9</sup> While the usage can be captured at the switch, no means currently exists to associate that usage with a particular EELs configuration (as opposed to other loop configurations which would not be subject to monitoring) or the time slot that is employed for a particular customers call within a piece of equipment that is provided by the ILEC as a  
(continued . . .)

be substantial network reconfiguration that required the use of facilities that are restricted to a particular jurisdictional type of traffic. Such a reconfiguration effort would be prohibitively expensive, both because it would be costly to implement and because it would introduce substantial inefficiencies into AT&T's network operations.

21. The difficulty of meeting these requirements also provides incumbent LECs with substantial opportunity to refuse to allow CLECs to convert existing special access circuits and/or to abuse the audit process permitted by the temporary rules, notwithstanding the FCC's effort to discourage routine invocation of such audits in the *Supplemental Order Clarification*. In spite of AT&T's considerable efforts to identify and convert its special access circuits that are used to provide local service – in many cases going as far as providing the ILEC with a comprehensive list of those circuits – to this point, AT&T has generally been unable even to submit conversion orders, because the ILECs have required conversion orders to specify in writing which safe harbor is being relied on when the order is placed. Although AT&T knows the customers to whom it provides local service, it is virtually impossible to make the detailed certifications contemplated in the safe harbors to actually convert those customers to UNEs. And even if AT&T or other CLECs made such a certification based on some rational estimate of its customers' traffic, the inability to

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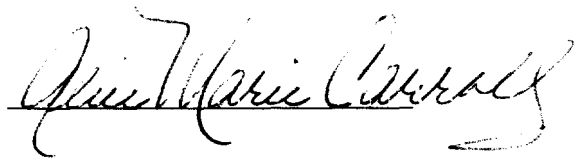
UNE. Beyond the preceding difficulty, the classification of usage as local versus non-local must still be overcome.

measure such traffic precisely would engender automatic audit requests and endless disputes with the ILEC.

22. In short, the “safe harbors” defined in the *Supplemental Order Clarification* have completely failed in their purpose. They simply do not provide CLECs with any prospect that they can convert special access circuits to UNEs, even in cases where they in fact use special access circuits to provide a significant amount of local service. The safe harbors have therefore succeeded in only one respect – preventing any erosion in the ILECs’ monopoly access profits.

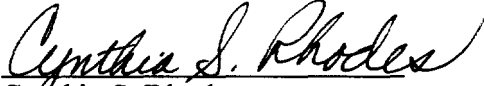
I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 4, 2001.

A handwritten signature in cursive script, reading "John Marie C. Kelly", written over a horizontal line.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 4, 2001.

  
Cynthia S. Rhodes